

No. 18-7300

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**In The United States Court of Appeals**  
**For The**  
**Fourth Circuit**

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ALFONZA HARDY GREENHILL,  
*PLAINTIFF-APPELLANT,*

vs.

HAROLD W. CLARKE, DIRECTOR, STATE  
OF VIRGINIA DEPARTMENT OF CORRECTIONS,  
IN HIS INDIVIDUAL AND OFFICIAL CAPACITY, ET AL.,  
*DEFENDANTS-APPELLEES*

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On Appeal from the  
United States District Court, W.D. Virginia  
Honorable James P. Jones  
D.C. No. 7:16-CV-00068

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**BRIEF OF AMICI CURIAE PROFESSORS AND PRACTITIONERS  
OF PSYCHIATRY, PSYCHOLOGY, AND MEDICINE  
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

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MICHAEL P. DOSS  
SIDLEY AUSTIN LLP  
ONE SOUTH DEARBORN STREET  
CHICAGO, ILLINOIS 60603  
TELEPHONE: +1 312 853-7000  
[mdoss@sidley.com](mailto:mdoss@sidley.com)  
*Counsel for Amici Curiae*

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## IDENTITY AND INTEREST OF AMICI CURIAE<sup>1</sup>

Amici curiae are experts in psychiatry, medicine, and psychology who have spent decades studying solitary confinement and its psychological and physiological effects on prisoners. Based on their own work and assessment of professional literature, amici have concluded that solitary confinement causes substantial harm to prisoners' mental and physical health. This extreme harm is in no way typical of the impact prison life has on those in the general prison population. Further, the deprivation of access to religious services at issue in this case will serve to further isolate the Appellant, exacerbating the harms arising from his solitary confinement. Such a deprivation thus imposes a substantial burden on prisoners in solitary like Appellant without any apparent corresponding penological benefit.

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<sup>1</sup> Amici submit this brief pursuant to Federal Rule of Appellate Procedure 29(b). Amici have filed a motion for leave to file this brief, as required by Federal Rule of Appellate Procedure 29(b)(2), and the parties also have consented to the filing. Amici state, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), that no counsel for a party authored this brief in whole or in part, and no person other than the amici or their counsel contributed money to fund preparing or submitting this brief.

Amici thus have an interest in this case, and submit this brief supporting Appellant Greenhill's appeal and reversal. Amici will review the scientific studies and literature regarding the impact of solitary confinement on prisoners such as Greenhill and analyze how these studies impact any claim that the further isolation of Greenhill could serve penological interests in rehabilitation or security.

Amici are the following: Stuart Grassian, M.D., is a psychiatrist who taught at Harvard Medical School for almost thirty years. He has evaluated hundreds of prisoners in solitary confinement and published numerous articles on the psychiatric effects of solitary confinement.

Craig W. Haney, Ph.D., J.D., is Distinguished Professor of Psychology and UC Presidential Chair at the University of California, Santa Cruz. He has researched and published numerous articles on the psychological effects of solitary confinement and has provided expert testimony before numerous courts and the United States Senate.

Terry A. Kupers, M.D., M.S.P., a Distinguished Life Fellow of The American Psychiatric Association, is Professor Emeritus at The Wright Institute. He has provided expert testimony in several lawsuits about prison conditions and published books and articles on related subjects.



Pablo Stewart, M.D., is Clinical Professor of Psychiatry at the University of Hawaii. He has worked in the criminal justice system for decades and as a court-appointed expert on the effects of solitary confinement for more than thirty years.

## ARGUMENT

### **I. Solitary Confinement, Such As Endured by Greenhill, Subjects Prisoners To Severe Psychological and Physiological Harms.**

Justice Kennedy has recognized that solitary confinement “exact[s] a terrible price.” *Davis v. Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring). This conclusion is broadly supported by scientific research, which has produced “strikingly consistent” results: the deprivation of meaningful social contact and environmental stimulation arising from solitary confinement subjects prisoners to grave psychological and physiological harms. Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 *Crime & Justice* 365, 367-68, 370-75 (2018) (collecting studies); *see also* Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 *Wash. U. J. L. & Pol’y* 325, 335-38 (2006). Indeed, experts have recognized that the chronic stress imposed by such isolation “can be as clinically

distressing as physical torture.” Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psychiatry & L. 104, 104 (2010); see also *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (“[I]t is well documented that . . . prolonged solitary confinement produces numerous deleterious harms.” (Breyer, J., dissenting, citing amici Haney and Grassian)).

“Solitary confinement,” as employed in the scientific literature and this brief, does not refer to absolute isolation from other humans in an environment completely devoid of positive environmental stimuli. Indeed, amici are not aware of any facility in the United States that absolutely isolates prisoners. Rather, solitary confinement describes imprisonment under conditions where meaningful social interaction and positive environmental stimuli are severely restricted. Greenhill’s isolation at the Red Onion facility – described by appellees and the district court as “segregation” and “special housing” (JA257, JA259, JA392, JA402) – is fully consistent with the typical conditions of

solitary confinement at the facilities that were the subjects of the studies recounted by amici here.<sup>2</sup>

Psychological injuries from solitary confinement include cognitive dysfunction, severe depression, memory loss, anxiety, paranoia, panic, hallucinations, and stimuli hypersensitivity. See Terry A. Kupers, *Waiting Alone to Die*, in *Living On Death Row: The Psychology of Waiting To Die* 47, 53 (Hans Toch & James Acker eds., 2018); Craig W. Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinquency* 124, 130-31, 134 (2003) (collecting studies); Grassian, *Psychiatric Effects*, *supra*, 22 *Wash. U. J. L. & Pol’y* at 335–36, 349, 370–71; Terry A. Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for*

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<sup>2</sup> In particular, amici understand that, since September 2015, Greenhill has been classified to the most restrictive of Red Onion’s solitary confinement levels, Special Management-0 (“SM-0”). JA367. In that confinement level, Greenhill is confined alone in a 12-foot by 7-foot cell for 23 hours a day. JA151; JA200; JA8. He receives his food through a slot in the door and eats alone in his cell. JA32; JA11-12; JA47-48; JA351. He is limited to two phone calls a month. JA152. Greenhill submits to multiple strip searches every week, and is allowed to exercise for an hour in an outdoor cage similar in size to his cell. JA151; JA125; JA269; JA8, JA11-12. He is allowed a single hour-long non-contact visit each week. JA151.

*Punishment's Sake?*, in Routledge Handbook of International Crime and Justice Studies 213, 216 (Bruce Arrigo & Heather Bersot eds., 2013); Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime & Just. 441, 488–90 (2006). Self-injurious behavior, such as self-mutilation and suicidal behavior is also prevalent among prisoners in solitary confinement. Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry 1450, 1453 (2006); Grassian, *Psychiatric Effects*, *supra*, at 349.

The damage from prolonged solitary confinement is not limited to psychological symptoms and disability, there are also medical problems and physical changes in the brain. Once thought to be an unchanging organ, the brain is now recognized to develop and change over time in response to environmental factors. According to various studies, chronic stress such as what is imposed by solitary confinement can impair brain structure and function in multiple ways. See Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Scientific American (Nov. 2018) (<https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/>);

Bruce C. McEwen, *Protective and Damaging Effects of Stress Mediators*, 338 *New Eng. J. Med.* 171, 175-76 (1998). Over time, excessive stress kills brain cells, “rewires” the brain, and reduces the size of the brain. See Carol Schaeffer, “Isolation Devastates the Brain”: The Neuroscience of Solitary Confinement, *Solitary Watch* (May 11, 2016); Nicole Branan, *Stress Kills Brain Cells Off*, 18 *Scientific American* 10 (June 2007) (<https://www.scientific-american.com/article/stress-kills-brain-cells/>); M. Malter Cohen, et al., *Translational Developmental Studies of Stress on Brain and Behavior*, 249 *Neuroscience* 53, 54-55 (2013). Chronic stress damages the hippocampus, a brain area important for emotion regulation and memory. See D. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, *supra*. Stress can also increase the size of the amygdala, which makes the brain more receptive to stress, creating a vicious cycle. See Bruce S. McEwen, et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 *Neuropsychopharmacology* 3 (2015). An increased likelihood of dementia is associated with such social isolation. See Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment*, 90 *Ind. L.J.* 741, 755 (2015)

(summarizing studies). Prisoners in solitary confinement also commonly suffer other physiological injury, including hypertension, heart palpitations, gastrointestinal disorders, headaches, and severe insomnia. Kupers, *Waiting Alone to Die*, *supra*, at 54; Haney, *Mental Health Issues*, *supra*, at 133; P. Smith, *The Effects of Solitary Confinement on Prison Inmates*, *supra*, at 488–90.<sup>3</sup>

The substantial duration of solitary confinement endured by Greenhill – over 3 years – is thus likely to have inflicted significant harm, even if the symptoms are not obvious or have yet to manifest. See Diana Arias & Christian Otto, NASA, *Defining the Scope of Sensory Deprivation for Long Duration Space Missions* at 43 (2011). Such injury

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<sup>3</sup> Notably, solitary confinement is uniquely harmful to prisoners as compared to those in the general prison population. Studies consistently demonstrate that solitary confinement causes psychological and physiological damage that is extreme in comparison to harms experienced by prisoners in general population. See Craig W. Haney, *Restricting the Use of Solitary Confinement*, 1 *Ann. Rev. Criminology* 285, 292–93 (2018); Kenneth Appelbaum, *American Psychiatry Should Join the Call to Abolish Solitary Confinement*, 43 *J. Am. Acad. Psychiatry & L.* 406, 410 (2015); Terry A. Kupers, *Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It* at 32 (2017) (“No matter what mental condition a man is in before entering solitary, in my experience it is rare that he does not emerge in demonstrably worse mental and physical condition.”).

may be irreversible. See Craig W. Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinquency* 124, 137-41 (2003); Kupers, *Waiting Alone to Die*, *supra*, at 54; see also Richard Kozar, *John McCain (Overcoming Adversity)* 53 (2002) (Senator McCain described his solitary confinement in Vietnam as “crush[ing] your spirit and weaken[ing] your resistance more effectively than any other form of mistreatment.”); Arias & Otto, *NASA, Long Duration Space Missions*, *supra*, at 43 (2011) (finding that “symptoms of anxiety, confusion, depression, suspiciousness and detachment from social interactions” often remain for decades after isolation is discontinued).

## **II. Deprivation of Religious Services Imposes A Substantial Burden on Prisoners in Solitary Like Greenhill Without Any Apparent Corresponding Penological Benefit.**

Prisoners in extended solitary confinement like Greenhill are especially vulnerable to further deprivations by prison officials that increases their isolation. In particular, denying access to meaningful religious services in which a prisoner in solitary wishes to participate will further isolate the prisoner, further reduce his sense of self-worth,

and render him even more incapable of dealing with his confinement and with prison staff in any constructive manner.

Numerous studies have shown the psychological significance of a person's sense of connectedness and belongingness – the human brain is literally “wired to connect” with others. See Lieberman, M., *Social: Why Our Brains Are Wired to Connect*. New York: Random House (2013); Expert Report of Craig Haney in *Ashker v. Brown*, No. 4:09-cv-05796-CW at 81 (N.D. Cal. Mar. 12, 2015) (available at [https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted\\_Haney%20Expert%20Report.pdf](https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted_Haney%20Expert%20Report.pdf)). Religion, and religious services, are a profound way for humans to provide just such a sense of connectedness and belongingness. Taking away that connection from a prisoner in solitary like Greenhill can accelerate and exacerbate the harms arising from solitary confinement that we describe above.

We understand that one issue before this Court is whether the decision to deny Greenhill's ability to participate in Jum'ah (also known as Friday Prayer) can serve a rehabilitative function that might justify the restriction. In our experience, however, such an added deprivation involving a prisoner in solitary confinement is exceedingly unlikely to



serve any rehabilitative function. We are not aware of any credible prison study or analysis that suggests that further isolating a prisoner in this fashion will in any way aid the prisoner in developing the tools needed to have normal social interactions or contacts once released into either the general prison population or free world.<sup>4</sup> In fact, research suggests just the opposite – that participation by prisoners in religious services has a beneficial impact on their rehabilitation and reduces recidivism. See Kent R. Kerley et al., *Religiosity, Religious Participation, and Negative Prison Behaviors*, 44 *J. for the Sci. Study of Religion* 443, 453 (2005); Thomas P. O'Connor & Michael Perryclear, *Prison Religion in Action and its Influence on Offender Rehabilitation*, *J. of Offender Rehabilitation*, Vol. 35(3-4), at 11, 26, 28 (2002). Such benefits have been recognized by this Court. *Brown v. Peyton*, 437 F.2d 1228, 1230–31 (4th Cir. 1971) (“Criminals and prison communities may

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<sup>4</sup> Prison officials sometimes contend that solitary confinement is not harmful to prisoners and cite to a study in Colorado. See Maureen L. O’Keefe et al., *Reflections on Colorado’s Administrative Segregation Study*, 278 *Nat’l Ins. Just. J.* 1 (2017). Any such conclusion, however, is at odds with the overwhelming scientific consensus and based on flawed methodologies. See, e.g., Stuart Grassian & Terry A. Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, 13 *Correctional Mental Health Rep.* 1, 11 (2011).

be benefited by the free exercise of religion.”); *see also Charles v.*

*Verhagen*, 348 F.3d 601, 608 (7th Cir. 2003) (noting the “important role” religion can play in prisoner rehabilitation).

In contrast, increasing prisoner isolation and disconnectedness – as accomplished by the added restriction on Greenhill – makes it less likely that a prisoner will be able to constructively deal with prison staff or with other prisoners (if allowed back into the general prison population). Studies have shown that prisoners enduring lengthy solitary confinement develop coping behaviors that can become lifelong and which undermine their ability to have normal social interactions or physical contacts with others once released from solitary. *See* Craig W. Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev. L. & Soc. Change 477, 567 (1997); Haney, *Mental Health Issues, supra*, 49 Crime & Delinq. at 140 (prisoners in prolonged solitary confinement “become increasingly unfamiliar and uncomfortable with social interaction” causing them to feel “further alienated from others and made anxious in their presence”); Terry A. Kupers, *Solitary: The Inside Story of Supermax Isolation and How We*

*Can Abolish It* at 97 (2017) (“The longer one spends idle in a cell by oneself, the more one’s skills for living in the community disappear . . . .”).

For the same reason, we question any suggestion that increasing Greenhill’s isolation in this manner can serve any legitimate prison security interest. Again, increasing isolation of prisoners tends to render them more maladjusted and incapable of constructive interactions with prison staff or others. See Terry A. Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment’s Sake?*, in *Routledge Handbook of International Crime and Justice Studies* 213, 218 (Bruce Arrigo & Heather Bersot eds., 2013) (solitary confinement leads to “damaged prisoners who become chronically dysfunctional”). Multiple studies have found prisoners in isolation prone to “fits of rage,” panic, loss of control, and psychological regression. Craig W. Haney Expert Report in *Ashker v. Brown, supra*, at 16-17 ( No. 4:09-cv-05796-CW at 81 (N.D. Cal. Mar. 12, 2015) (recounting studies); see Hans Toch, *Men in Crisis: Human Breakdowns in Prisons*. Aldine Publishing Co.: Chicago (1975). In fact, solitary confinement has been found to result in “acute mental illness in

individuals who had previously been free of any such illness.” Grassian, *Psychiatric Effects, supra*, at 333. See also Thomas Hafemeister & Jeff George, *The Ninth Circle of Hell*, 90 Denv. U. L. Rev. 1, 46–47 (2012) (Washington study concluding that mental illness was twice as common for prisoners in solitary confinement); Bennion, *Why Extreme Solitary Confinement is Cruel, supra*, 90 Ind. L.J. at 758 (recounting Denmark study that concluded that prisoners in solitary confinement were twenty times more likely to require psychiatric hospitalization than prisoners in general population); *Ayala*, 135 S. Ct. at 2209 (Solitary confinement “will bring you to the edge of madness, perhaps to madness itself.”) (Kennedy, J., concurring).

Finally, to the extent prison officials seek to justify the restriction as some type of effort in behavior modification, we believe such officials would be hard-pressed to set forth any credible behavior modification plan that would suggest depriving religious services in order to force compliant behavior, especially for prisoners in solitary who are likely psychologically compromised in some fashion. We further note that the record appears devoid of any evidence that this type of behavior

modification program can work (as it self-evidently did not in the case of Greenhill).<sup>5</sup>

## CONCLUSION

For the reasons given above, amici request that this Court find in favor of Appellant Greenhill and reverse the district court's judgment.

Dated: January 22, 2019

Respectfully submitted,

/s/ Michael P. Doss

MICHAEL P. DOSS  
SIDLEY AUSTIN LLP  
ONE SOUTH DEARBORN STREET  
CHICAGO, ILLINOIS 60603

TELEPHONE: +1 312 853-7000

FACSIMILE: +1 312 853-7036

*Counsel for Amici Curiae*

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<sup>5</sup> We recognize that the district court credited a prison official's assertion that television access is a "great motivator" for the typical prisoner, *Greenhill v. Clarke*, 2018 WL 452074, at \* 7 (W.D. Va. Sept. 19, 2018) but that assertion says nothing about how denial of religious services might in fact serve to "motivate" improved conduct by a prisoner who has spent the last three years in solitary confinement, such as Greenhill, rather than simply serve, more predictably, to further isolate that prisoner and render him even less capable of constructive human interaction.

## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32, the undersigned certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 29(b)(4). The brief is proportionally spaced, has typeface of 14 points, and contains 2834 words, based upon the word count feature of Microsoft Word, version 2016.

I further certify that a copy of the foregoing Brief of Amici Curiae Professors and Practitioners of Psychiatry, Psychology, and Medicine In Support of Appellant and Reversal, as submitted in digital form via the Court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses using the Carbon Black Sensor program, version 3.1.0.100, and, according to that program, is free of viruses. I further certify that that all required privacy redactions, if any, have been made to this document.

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          /s/ Michael P. Doss            
*Counsel for Amici Curiae*

January 22, 2019



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